IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4327 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RATILAL BACHUBHAI JANI

Versus

STATE OF GUJARAT

Appearance:

MR BHARGAV N BHATT for Petitioner

MR SUDHANSHU PATEL APP for Respondent No. 1

MR A.D. Shah for Respondent Nos. 2 & 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 18/10/2000

ORAL JUDGEMENT

The petitioner who is the original complainant prays for cancellation of the bail granted to the

opponent Nos. 2 and 3 who were arrested in connection with the offence of murder.

2. Against Dayaram Shambhubhai and the opponent Nos. 2 and 3 in the Talaja Police Station a complaint relating to the offence of murder came to be lodged and it was then registered as C.R. No.38 of 1998. The same was registered for the offences punishable under Sec.302, 120(B), 504 and 506 (Part 2) of Indian Penal Code. Dayaram Shambhubhai and opponent Nos. 2 and 3 had committed the murder of Manubhai. Dayaram Shambhubhai caused the injury by spear and and opponent Nos. 2 and 3 caused injury by sword. During the course of the investigation, all the three accused were arrested. All the three accused after being arrested, filed Criminal Misc. Application No.510 of 1998 in the Sessions Court at Bhavnagar, which was assigned to the then learned Additional Sessions Judge, Bhavnagar holding the Camp at Mahuva. He (Shri K.C. Brahmbhatt) hearing the parties, dismissed the application on 30th June, 1998. At that time, chargesheet was already filed. Again all the three accused filed another bail application being Criminal Misc. Application NO.969 of 1998 in the Sessions Court at Bhavnagar which was assigned to the then learned Additional Sessions Judge, holding the Camp at Mahuva. The then learned Additional Sessions Judge (Shri D.H. Muchhala), hearing the parties, on 9th October, 1998 allowed the application partly and released the opponent Nos. 2 and 3 on bail. The application, so far as the same was relating to Dayaram Shambhubhai came to be dismissed. As the opponent Nos. 2 and 3 were released on bail, the State filed Criminal Misc. Application No.4875 of 1998 in this Court for cancellation of the bail granted by the learned Additional Sessions Judge at Mahuva. The petitioner who is the complainant also filed this application for getting the bail cancelled. The application filed by the State is already disposed of on 10th July, 2000. The same is dismissed. After the dismissal of that application this application was placed for hearing.

3. The learned advocate representing the petitioner took me to the copies of the orders passed by both the learned additional Sessions Judges at Mahuva and submits that Mr. Muchhala, the learned Additional Sessions Judge who disposed of the second application allowing the same partly and granting bail to the opponents Nos.2 and 3 fell into error both on law and facts. Ordinarily in the case of murder punishable for death or imprisonment for life, the court is not expected to grant bail unless the case of the accused falls within the proviso to Sec.437

Criminal Procedure Code. The first application being Criminal Misc. Application NO.510 of 1998 which was preferred after the chargesheet was filed, was rightly rejected, by the then learned Additional Sessions Judge. Thereafter it was not open to the opponent Nos. 2 and 3 to prefer another application for bail unless there was any substantial change in the circumstances. On going through both the orders, it appears that there was no substantial change in the circumstances. The Post-mortem Note was also considered in the previous application being Criminal Misc. Application No.510 of 1998. It was not the case that the Post-mortem note was not there on record when the former application was heard, and it came to be placed on record for the first time when the second application which came to be partly allowed, was being heard. Therefore there was no substantial change in the circumstances. The learned Additional Sessions Judge ought not to have entertained the second application being Criminal Misc. Application No.969 of 1998. However, the learned Additional Sessions Judge ignoring the facts on record made strange attempt assigning fallacious reasons to justify the stand he was taking. The appreciation of the evidence made is erroneous because, the learned Additional Sessions Judge misread the earlier order and failed to notice the points already dealt with by the learned Additional Sessions Judge who disposed of the first application. The reasons given by the learned Additional Sessions Judge while disposing of the second application are shocking, illogical and weird. The observations made by the learned Additional Sessions Judge in the order are ill-based and vague. The discretion exercised by the learned Additional Sessions Judge in releasing the opponent Nos. 2 and 3 is hence arbitrary, perverse and wholly in disregard of sound principle of law. Submitting accordingly, the learned advocate for the petitioner took me to different decisions, so as to show how the learned Additional Sessions Judge was wrong in his approach.

4. In the case of Chandulal Hiralal Lodhiya vs. State of Gujarat and ors. 34 (1) [(1993) (1)] GLR 596, it is held that if the bail is granted exercising the discretion on totally irrelevant grounds, the bail granted must be cancelled. The complainant being a party can apply for the cancellation of bail. It's not that only the State can file the application for cancellation of bail. In other case of State of Gujarat vs. Deepak Jaswantlal Sheth, 39(3) [1998(3)] GLR 2240, what is held is that if the approach of the Court on the materials on record is found wholly unwarranted and unravels lack of judicious exercise of discretion by

ignoring all well settled principles in considering the bail application at the stage when investigation is not completed, it would be just to cancel the bail. The Supreme Court in the case of State of Orissa vs. Rajendra Prasad Bharadia and anr. 1994 (5) SCC 146, has held that even if it is found that there is no risk of winning over the witness or tampering with the evidence, the same, in the peculiar facts and circumstances would not be the adequate reason to release the accused on bail. In that case, looking to the cardinal principle and heinousness of the crime, Hon'ble Supreme Court found that it was not just and proper to release the accused on bail, and therefore, bail granted was cancelled. In the case of Shahzad Hasan Khan vs. Ishtiaq Hasan Khan and anr. AIR 1987 SC 1613, the accused was involved in murder committed in broad day light, and as there were numbers of witnesses, it was alleged that the evidence would be tempered with, the order granting the bail was then quashed, observing that no doubt liberty of a citizen must be zealously safeguarded by Court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merits, there being prima facie material, the prosecution is entitled to place correct facts before the Court. Liberty is to be secured through the process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world, as also collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. One should not be influenced by the concept of liberty, disregarding the facts of the case. It is hence submitted that not to create impression in the society that there is no justice and not to cause the people to lose faith in the institution, this Court may allow the application and reject the appeal.

5. What is held in the case of Arvind Shivlal Soni vs. State of Gujarat, 38(1) [1997(1)] GLR 92, is that once the application for bail is rejected, another application cannot be allowed, unless there is a new ground. The arguments cannot be advanced that in earlier petition particular point was not raised. It should be presumed that all the contentions which were available, were raised at the time of hearing of the first application. The next decision cited is rendered in the case of Jitubhai Shanabhai Bhatt vs. State of Gujarat, 33 (2) [1992(2)] GLR 832 wherein it is made clear that both, the prosecution and the defence should have fair opportunity where a bail application presented by the

accused is decided only on the basis of the contents of the First Information Report and the accused does not get the same opportunity as the prosecution. The accused should have, therefore the opportunity to file another application after the chargesheet is filed. On the basis of this, it is again submitted by Mr. Bhatt, the learned advocate for the petitioner that in this case, both the applications were filed after the chargesheet was presented and therefore, the second application in the absence of any substantial change in the circumstances was not maintainable. Lastly a decision of the Bombay High Court, reported in 1990 Criminal Law Reporter (MAH) (not given to the Court for perusal and not available in Court Library) was referred to so as to base the contention that if the Court passes the order granting bail contrary to the provisions of the law, it would be a fit case for higher forum to cancel the bail. In the case on hand, when the second application was filed, there was no substantial change in the circumstances and further the change in the circumstances sought to be justified by the judge is weird and illogical, second application for bail ought not to have been entertained.

6. In reply to such contentions, Mr. A.D. Shah, the learned advocate representing the opponent Nos. 2 and 3 submits relying on the decisions of the Supreme Court rendered in the cases of Bhagirathsinh Jadeja vs. State of Gujarat, AIR 1984 SC 372, Dolatram and others vs. State of Haryana, 1995 SCC (Criminal) 237 and Subhendu Mishra vs. Subrat Kumar Mishra and anr., AIR 1999 SC 3026, that bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. The consideration for refusing the bail at the initial stage and after granting of the bail for cancellation thereof are quite different and one cannot be invoked for another. Very cogent and overwhelming circumstances are required to be shown for seeking the order of cancellation of bail already granted. The Court has to make endeavour perusing the materials on record and find out whether the applicant has shown that the accused after being released on bail misused his liberty. In another words, it should be shown leading necessary evidence that after being enlarged on bail, the accused is interfering or making an attempt to interfere with the due course of administration of justice, or is intimidating the witnesses or tampering with the evidence or is trying to delay the final decision, because the bail once granted

is not to be cancelled in mechanical manner, some special reasons are required to be assigned. Such law guards the liberty of human being, and when the lability is placed at the highest pedestal in law, the same cannot be snatched away on frivolous, trivial insignificant or ingenious ground or skilfully contrived cases. It is not the law that in the case of murder, bail cannot be granted under Sec.439 of the Criminal Procedure Code. The Court, vested with wide powers, considering the facts and circumstances on record, finds that the accused is required to be released on bail, it is free to exercise discretionary powers in favour of the accused. In the case on hand when the Additional Sessions Judge has preferred to exercise his discretion and there is nothing on record to show that discretion exercised is arbitrary or perverse, the bail granted may be maintained. Of course with regard to the principles qua bail made clear in the above stated decisions being sound there can have no scope to admit any other view on any count but those principles would not come into play in this case.

7. Mr. Sudhanshu Patel, the learned APP for the State submits that the Court may pass appropriate order in the matter.

8. It is not necessary to plunge into deep and find out which of the principles made clear in the above citations would be favouring which of the parties and finally what order should be passed because this application fails on one ground going to the root of the case. The State had preferred Criminal Misc. application No.4875 of 1998 against both the respondents i.e. respondent Nos. 2 and 3, for cancellation of bail. Hearing the parties, the said application is rejected on 10th July, 2000. All the grounds were available to the State but the State did not prefer to fall back on those grounds which are resorted to by the petitioner. In view of the fact, when the issue about the cancellation of bail is already set at rest, the second inning thereof through any person, if permitted, would amount to incursion of sound practice. The petition on this ground, therefore, fails.

9. The petition also cannot be allowed exercising the discretion because as submitted, by now all the main witnesses are examined by the Court and two Panch Witnesses are to be examined on 20th October, 2000. Thereafter Diwali vacation intervenes and the Medical Officer and the Investigating Officer would be examined after the Diwali vacation. The Court will then pronounce the judgement at the earliest. When the hearing has

reached to such fag end / stage, and further since the release of the opponent Nos. 2 and 3 although about the two years have rolled, by nothing untoward has happened injurious to the interest of the prosecution, and the opponent Nos. 2 and 3 have not misused their liberty, it would not be in such facts and circumstances just, to cancel the bail. No doubt, Mr. Bhatt the learned Advocate for the petitioner at this stage submits that the petitioner had lodged the complaint against the opponent Nos. 2 and 3 soonafter they were granted bail because they tried to take disadvantage of their liberty by giving threat. Of course in this regard a complaint is lodged; and the said issue is, as per the submission before me, is controversial. The factual investigation which was required to be made, has been made but what is the result of the investigation is not brought to my notice. In view of peculiar facts and circumstances, it would not be just and proper to cancel the bail. The petition, in the result, is hereby dismissed. Notice discharged.

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